

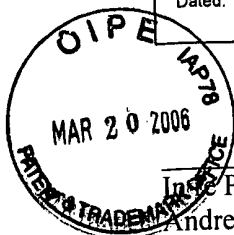
DAC
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I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: MS Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: March 16 2006

Signature: 

Docket No.: 29985/05-112C
(PATENT)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Andrew H. Cragg et al.

Application No.: 10/069,107

Art Unit: 3736

Filed: December 16, 2002

Examiner: Brian Scott Szmai

For: Device and Method for Determining a Depth of
an Incision

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT, OR AS A FIRST
ALTERNATIVE, PETITION TO REVIVE UNAVOIDABLY ABANDONED
APPLICATION UNDER RULE 137(a) DUE TO FAULT OF THE USPTO OR US
POSTAL SERVICE, OR AS A SECOND ALTERNATIVE, PETITION TO REVIVE
UNINTENTIONALLY ABANDONED APPLICATION UNDER RULE 137(b)**

Attn: Office of Petitions
MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Commissioner:

INTRODUCTORY COMMENTS

This paper is filed in response to the notice of non-compliant amendment mailed on November 3, 2005, but not received in Chicago until March 3, 2006 and not received at the correct address of record until March 6, 2006.

No fee is enclosed herewith. However, authorization is hereby provided to charge deposit account no. 50-3629 with the \$500.00 fee under Rule 17(1) for a petition under Rule 137(a) if the petition to withdraw the holding of abandonment is not granted or to charge deposit account no. 50-3629 with the balance of \$1500.00 due if the Office deems this to be an unintentionally abandoned application under Rule 137(b). However, the undersigned request relief from all fees as the abandonment is clearly the fault of the U.S. Government -

03/21/2006 TBESHAM1 00000028 503629 10069107

01-FC:1402

500.00 DA

Void date: 03/21/2006 TBESHAM2

03/21/2006 TBESHAM1 00000028 503629 10069107

01-FC:1402

500.00 CR

BEST AVAILABLE COPY

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03/21/2006 TBESHAM2 00000031 503629

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01 FC:1452

either the U.S. Patent and Trademark Office or the U.S. Postal Service for the reasons stated below.

GROUND FOR RELIEF

Argument A

1. Applicants filed a revocation of prior powers of attorney and appointment of new power of attorney on October 19, 2005. The Office has not yet acknowledged that filing for this application despite the time lag of nearly 5 months. A copy of the revocation and appointment and return postcard is attached as Exhibit A.

2. Applicants timely filed an amendment after final, a RCE application, an extension of time and a check for \$1240.00 on October 26, 2005. Copies of those documents and the return postcard are attached as Exhibit B.

3. The Office prepared and *allegedly* sent a notice of non-compliant amendment on November 3, 2005. A copy of that notice is attached as Exhibit C.

4. The notice (Exhibit C) was mailed to the wrong address. The address set forth by the revocation of prior powers was not used despite the earlier filing (Exhibit A). Further, the amendment (Exhibit B) makes specific note of the address change in the first paragraph of the remarks section (see page 8 of the original amendment and MPEP 711.03(c) at 700-184, paragraph (A) in the right hand column). The clerk should have telephoned the undersigned. She did not. Therefore, because the Office mailed a short time frame notice to the wrong address without the courtesy of phone call, in the interest of fairness and equity, the 30 day period set forth on the notice should be *waived*, this application reinstated and no fee charged. The undersigned also asks the Office to take action on the revocation of Exhibit A so this unfortunate occurrence is not repeated.

5. Thus, the Office sent the notice to the wrong address, the Office has two notices (Exhibits A and B) of the correct address, and it is doubtful that the Office even mailed the notice on November 3, 2005 for the reasons set forth below.

Argument B

6. Further, the notice (Exhibit C) was not received by the undersigned's prior firm until March 3, 2005 as evidenced by the date stamp on the notice labeled "Marshall Gerstein" and not received at the undersigned's current firm until March 6, 2006 as

evidenced by the unlabelled March 6, 2006 date stamp of our firm. This application went abandoned on December 20, 2005.

7. Issue: what happened to the notice between November 3, 2005 and March 3, 2006? The undersigned hereby submits the petition of Richard von Holst, the Docketing Manager of Marshall, Gerstein & Borun. Mr. von Holst has more than a decade of patent docketing experience. He clearly states that his firm does not "journal transferred cases" but that his well staffed mailroom department always date stamps U.S. Patent and Trademark Office mail on the day received. Mr. von Holst sets forth his firm policy and documented evidence that he transferred this application to our firm. See Exhibit B to his declaration. Thus, the three month time delay from the U.S. Patent and Trademark Office to Marshall, Gerstein & Borun is either the fault of the U.S. Patent and Trademark Office or the U.S. Postal Service and not the fault of Marshall, Gerstein & Borun and certainly not the fault of Miller, Matthias & Hull.

8. Because applicants' prior attorneys and current attorneys did not receive the notice (Exhibit C) until March 3 and March 6, 2006 respectively, regardless of the address change reported in Exhibits A and B, and because the fault lies with the U.S. Patent and Trademark Office or the U.S. Postal Service, this application should be reinstated without penalty, or as a first alternative, revived under Rule 137(a) and the \$500 fee *returned*.

9. A clerical error by the U.S. Patent and Trademark Office or a delivery error by the U.S. Postal Service clearly falls under the unavoidable guidelines. Applicant was not only unaware of the November 3, 2005 notice, applicant could not have been aware of it due to the fault of either the U.S. Patent and Trademark Office or U.S. Postal Service.

CONCLUSION

The undersigned started the three attorney firm with customer number 50-3629 on September 1, 2005. The imposition of a \$500 fee or, even worse, a \$1500 fee is draconian considering the objection made in the notice – use of the identifier (allowed) instead of (previously presented). The identifier (allowed) is actually more helpful than (previously presented), because the claim needs no further consideration by the Examiner. Why not just mark it up and send it on? Why not a quick courtesy phone call?

Application No.: 10/069,107

Docket No.: 29985/05-112C

A corrected amendment is submitted herewith. Our deposit account number is 50-3629; our customer no. is 57726. The Office is authorized to deduct any additional fees that may be due and necessary to pass this case back to the Examiner.

If the petitions attorney has any further questions regarding this petition or needs additional information, he or she is implored to telephone the undersigned at the number listed below.

Dated: March 16 2006

Respectfully submitted,

By

Michael R. Hull

Registration No.: 35,902

MILLER, MATTHIAS & HULL

One North Franklin Street

Suite 2350

Chicago, Illinois 60606

(312) 977-9902

Attorney for Applicants

The Patent Office is hereby requested to acknowledge receipt of the following papers by stamping and returning this card.

PATENTS

OFFICE

1. Transmittal of Revocation of All Prior Powers of Attorney and Appointment of New Power of Attorney
2. Revocation of All Prior Powers of Attorney and Appointment of New Power of Attorney
3. Exhibit A - Limited Authorization to Act on Behalf of Assignee.
4. Exhibit B - Application Serial No. List

paper is being
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addressed to:
ts, P.O. Box 1450
13-1450 on

Mailing Date: October 19, 2005



TRANSMITTAL OF REVOCATION OF ALL PRIOR POWERS OF ATTORNEY AND APPOINTMENT OF NEW POWER OF ATTORNEY

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Enclosed herewith is an executed Revocation of All Prior Powers of Attorney and Appointment of New Power of Attorney for the above-referenced patent applications.

Respectfully submitted,

MILLER MATTHIAS & HULL
One North Franklin Street
Suite 2350
Chicago, Illinois 60606-6357
(312) 977-9902

October 19, 2005

By:

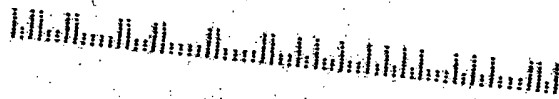
Thomas A. Miller
Reg. No. 40,091

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OCT 19 05

MILLER, MATTHIAS & HULL
One North Franklin Street
Suite 2350
Chicago, IL 60606

RECEIVED

OCT 28 2005



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Thomas A. Miller
Reg. No. 40,091
Attorney for Applicant

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Enclosed herewith is an executed Revocation of All Prior Powers of Attorney and Appointment of New Power of Attorney for the above-referenced patent applications.

MILLER MATTHIAS & HULL
One North Franklin Street
Suite 2350
Chicago, Illinois 60606-6357
(312) 977-9902

By:

Thomas A. Miller
Reg. No. 40,091

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
REVOCATION OF ALL PRIOR POWERS OF ATTORNEY AND APPOINTMENT
OF NEW POWER OF ATTORNEY

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

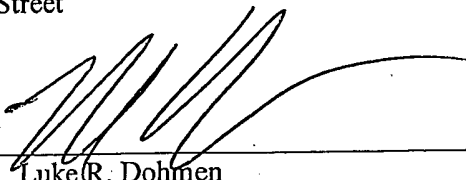
Sir:

I, Luke R. Dohmen, Vice President and Chief Patent Counsel, Cardiovascular, Boston Scientific Scimed, Inc., have power of attorney for Boston Scientific Corporation and certain corporations it controls including Boston Scientific Scimed, Inc.; Scimed Life Systems, Inc.; and Sub-Q, Inc. A copy of a Limited Authorization to that effect is attached hereto as Exhibit A. Each of the patent applications listed in Exhibit B attached to this power are currently assigned to one of the above-named corporations. I hereby revoke all previous powers of attorney with respect to the listed applications and appoint the following patent attorneys to act on our behalf: Michael R. Hull (35,902); Thomas A. Miller (40,091); Brent E. Matthias (41,974); and Jennifer L. Holmes (47,659).

In addition, all correspondence regarding these applications should be forwarded to the following address:

Thomas A. Miller
Miller, Matthias & Hull
One North Franklin Street
Suite 2350
Chicago, IL 60606

By


Luke R. Dohmen
Vice President & Chief Patent Counsel
Cardiovascular
Boston Scientific Scimed, Inc.

Date: Oct. 17, 2005

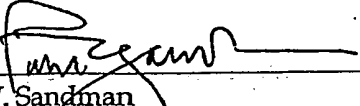
LIMITED AUTHORIZATION TO ACT ON BEHALF OF ASSIGNEE
REGARDING CERTAIN PATENT MATTERS
EFFECTIVE THROUGH: December 31, 2005

I, Paul W. Sandman, as Executive Vice President, Secretary, and General Counsel of Boston Scientific Corporation, the controlling corporation of:

Advanced Bionics Corporation; Advanced Stent Technologies, Inc.; AMS Medinvent S.A.; BEI Medical Systems; BEI Medical Systems Operating Company (formerly known as Xylog Corporation); BEI Medical Systems International, Inc.; Boston Scientific BV; Boston Scientific Corporation Northwest Technology Center, Inc.; Boston Scientific Ireland Limited; Boston Scientific Japan KK; Boston Scientific Limited; Boston Scientific Scimed, Inc. (formerly known as Schneider (USA), Inc.); Boston Scientific Scimed, Inc. (formerly known as Scimed Life Systems, Inc.); Cardiac Pathways Corporation; Cardiovascular Innovations Canada, Inc.; Catheter Innovations Corp.; Corvita Canada, Inc.; Corvita Corporation; Corvita Europe S.A.; Embolic Protection, Inc.; Enteric Medical Technologies, Inc.; EP Technologies, Inc.; Heart Technologies; Inflow Dynamics Inc.; Interventional Technologies, Inc.; Laboratoires Corvita S.A.R.L.; Meadox Medicals, Inc.; NAMIC Eireann Limited; NAMIC International, Inc.; Nilo Holding, S.A.; Precision Vascular Systems, Inc.; Prohold Medical Corporation; Prohold Technologies, Inc.; Provasis Therapeutics, Inc.; Quantum Corporation; Radio Therapeutics Corporation; Rubicon Medical Corporation; Schneider (Europe) GmbH; Schneider Belgium NV; Schneider Holland BV; Schneider Ireland BV; Schneider Puerto Rico (formerly known as NAMIC Caribe, Inc.); Schneider/NAMIC; Scimed Life Systems, Inc.; Smart Therapeutics, Inc.; Sub-Q, Inc.; Symbiosis Corporation; Target Therapeutics, Inc.; TriVascular, Inc.; and Vesica;

hereby authorize the following registered patent attorneys/agents (1) to act on behalf of any of the corporations identified above, including Boston Scientific Corporation, with regard to any matters before the United States Patent and Trademark Office, any foreign patent offices, and any international patent entities, (2) to execute power of attorney documents on behalf of any of the corporations identified above, including Boston Scientific Corporation, to appoint and/or establish any attorneys, agents, and/or law firms to act on behalf of any of the corporations identified above, including Boston Scientific Corporation, in any foreign or international patent applications filed with any foreign and/or international patent offices, and (3) to execute assignment and ownership documents on behalf of any of the corporations identified above, including Boston Scientific Corporation, with regard to any matters before the United States Patent and Trademark Office, any foreign patent offices, and any international patent offices:

Scott T. Blum	Reg. No. 40,916
James R. Chiapetta	Reg. No. 39,634
Bridget A. Cooney	Reg. No. 54,681
Luke R. Dohmen	Reg. No. 36,783
Peter J. Gafner	Reg. No. 36,517
Albert K. Kau	Reg. No. 40,672
Kurt W. Lockwood	Reg. No. 40,704
Jeffrey Z. Mann	Reg. No. 51,994
Steven A. McAuley	Reg. No. 46,084
Todd P. Messal	Reg. No. 42,883
William J. Shaw	Reg. No. 43,111


Paul W. Sandman
Executive Vice President, Secretary, and General Counsel

05/16/05
Date

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX

)
) ss.
)

on this 16th day of May, 2005 before me personally appeared Paul W. Sandman to me known and known to me to be the person described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same for the uses and purposes set forth herein.

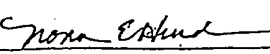

Nona E. Hurd
NOTARY PUBLIC

Exhibit B

Attorney Docket No.	Application Serial No.
29985/SM-P0236 US02	08/472,717
29985/05-125	08/528,892
29985/SM-P0236 US01	08/537,902
29985/SM-P0236 US03	08/647,778
29985/05-108	08/778,045
29985/SM-P0171	08/818,242
29985/05-125A	08/888,851
29985/05-111	08/937,939
29985/05-126	09/071,284
29985/05-109	09/071,670
29985/05-108A	09/119,268
29985/05-109A	09/247,880
29985/05-126A	09/263,603
29985/05-109C	09/334,700
29985/05-126B	09/335,452
29985/05-125A1	09/365,674
29985/05-109B	09/382,160
29985/05-115	09/570,857
29985/05-109D	09/589,036

Attorney Docket No.	Application Serial No.
29985/05-109E	09/613,059
29985/05-112A	09/621,670
29985/05-126A1	09/630,814
29985/05-109A1	09/687,590
29985/01-013	09/796,779
29985/01-040	09/797,473
29985/05-109F	09/805,734
29985/05-126C	09/810,931
29985/05-113A	09/843,496
29985/05-112B	09/859682
29985/05-114A	09/904,445
29985/05-126D	09/922,784
29985/01-009	09/934,242
29985/05-109G	09/953,395
29985/05-109H	09/960,389
29985/05-126E	09/966,611
29985/01-014	09/995,928
29985/05-124	10/007,204
29985/00-223	10/024,948
29985/01-028	10/027,154
29985/01-180	10/034,448

Attorney Docket No.	Application Serial No.
29985/01-180	10/034,448
29985/01-041A	10/043,051
29985/01-059	10/043,052
29985/05-117A	10/068,812
29985/05-112C	10/069,107
29985/05-116A	10/094,633
29985/05-125B	10/107,539
29985/05-125B	10/107,539
29985/01-492	10/109,220
29985/01-490	10/109,518
29985/SM-P0236	10/150,878
29985/01-184	10/187,922
29985/01-012	10/193,376
29985/01-492i	10/212,926
29985/01-258	10/224,189
29985/05-124A	10/256,493
29985/01-373A	10/262,924
29985/01-373A	10/262,924
29985/01-373A	10/262,924
29985/01-372A	10/263,018
29985/02-032	10/270,815

Attorney Docket No.	Application Serial No.
29985/01-011	10/278,663
29985/05-126B1-B	10/278,710
29985/05-118	10/287,922
29985/05-124A1	10/302,575
29985/01-443	10/309,466
29985/05-126F	10/319,260
29985/02-460	10/325,710
29985/05-116B	10/334,770
29985/02-089	10/335,510
29985/01-492I2	10/347,005
29985/05-109I	10/354,517
29985/05-115A	10/366,752
29985/02-144	10/397,724
29985/01-489	10/401,227
29985/01-490I	10/403,995
29985/05-126B1-C	10/421,680
29985/01-010	10/430,716
29985/02-460I	10/460,747
29985/05-118C	10/460,859
29985/05-124B	10/461,006
29985/05-112B1	10/461,035

Attorney Docket No.	Application Serial No.
29985/05-118B	10/461,587
29985/05-118A	10/462,064
29985/05-112D	10/462,065
29985/03-057	10/601,952
29985/02-332	10/616,622
29985/01-530	10/648,459
29985/02-029	10/670,405
29985/02-032I	10/679,049
29985/05-124C	10/732,441
29985/03-006	10/754,362
29985/05-114A1	10/754,824
29985/01-040I	10/786,789
29985/05-124I	10/857,471
29985/05-116A1	10/959,898
29985/05-126G	10/978,321
29985/05-151A	11/008,748
29985/05-109J	11/019,971
29985/04-231	11/023,055
29985/01-041B	11/077,322
29985/01-009US2	11/122,723
29985/05-150A	11/181,549

Attorney Docket No.	Application Serial No.
29985/05-112	60/156,007
29985/05-110	60/159,406
29985/05-113	60/200,702
29985/05-114	60/218,431
29985/01-041	60/272,674
29985/05-116	60/275,391
29985/05-117	60/275,420
29985/01-373P	60/326,940
29985/01-372P	60/326,941
29985/05-119	60/478,307
29985/05-120	60/487,456
29985/05-121	60/525,355
29985/05-151	60/528,383
29985/05-150	60/588,503

The Patent Office is hereby requested to acknowledge receipt of the following papers by stamping and returning this card.

1. Transmittal of Revocation of All Prior Powers of Attorney and Appointment of New Power of Attorney
2. Revocation of All Prior Powers of Attorney and Appointment of New Power of Attorney
3. Exhibit A - Limited Authorization to Act on Behalf of Assignee.
4. Exhibit B - Application Serial No. List

Mailing Date: October 19, 2005

The Patent Office is hereby requested to
acknowledge receipt of the following papers by
stamping and returning this card.

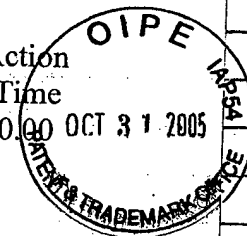
Serial No.: 10/069,107 – Filed December 16, 2002

Inventors: Cragg et al.

Attorney Docket: 29985/05-112C

1. Request for Continued Examination
2. Amendment and Response to Office Action
3. Petition for Two-Month Extension of Time
4. Check No. 178 in the amount of \$1240.00

Mailing Date: October 26, 2005

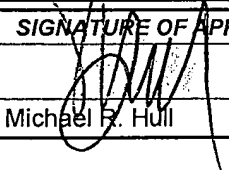


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Request For Continued Examination (RCE) Transmittal Address to: MS RCE Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number	10/069,107
	Filing Date	December 16, 2002
	First Named Inventor	Andrew H. Cragg, et al.
	Art Unit	3736
	Examiner Name	Brian Scott Szmai
	Attorney Docket Number	29985/05-112C

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.
 Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).
- a. ☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.
- i. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____
- ii. ☐ Other _____
- b. ☒ Enclosed
- i. ☒ Amendment/Reply
- iii. ☐ Information Disclosure Statement (IDS)
- ii. ☐ Affidavit(s)/Declaration(s)
- iv. ☐ Other _____
2. **Miscellaneous**
- a. ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of _____ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)
- b. ☐ Other _____
3. **Fees** The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.
- a. ☒ The Director is hereby authorized to charge the following fees, any underpayment of fees, or credit any overpayments to Deposit Account No. 50-3629. I have enclosed a duplicate copy of this sheet.
- i. ☒ RCE fee required under 37 CFR 1.17(e)
- ii. ☒ Extension of time fee (37 CFR 1.136 and 1.17)
- iii. ☐ Other _____
- b. ☒ Check in the amount of \$ 1240.00 enclosed
- c. ☐ Payment by credit card (Form PTO-2038 enclosed)

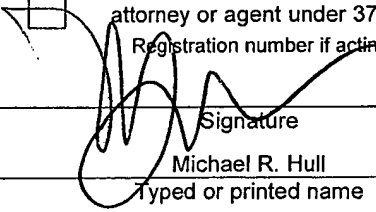
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED			
Signature		Date	October 26, 2005
Name (Print/Type)	Michael R. Hull	Registration No.	35,902

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: MS RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: October 26, 2005

Signature:  (Michael R. Hull)

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a) FY 2005 (Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).)		Docket Number 29985/05-112C	
Application Number 10/069,107		Filed December 16, 2002	
For Device and Method for Determining a Depth of an Incision			
Art Unit 3736		Examiner Brian Scott Szmai	
This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application. The requested extension and fee are as follows (check time period desired and enter the appropriate fee below):			
	<u>Fee</u>	<u>Small Entity Fee</u>	
<input type="checkbox"/> One month (37 CFR 1.17(a)(1))	\$120	\$60	\$
<input checked="" type="checkbox"/> Two months (37 CFR 1.17(a)(2))	\$450	\$225	\$
<input type="checkbox"/> Three months (37 CFR 1.17(a)(3))	\$1020	\$510	\$
<input type="checkbox"/> Four months (37 CFR 1.17(a)(4))	\$1590	\$795	\$
<input type="checkbox"/> Five months (37 CFR 1.17(a)(5))	\$2160	\$1080	\$
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27.			
<input checked="" type="checkbox"/> A check in the amount of the fee is enclosed.			
<input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.			
<input type="checkbox"/> The Director has already been authorized to charge fees in this application to a Deposit Account.			
<input checked="" type="checkbox"/> The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number <u>50-3629</u> . I have enclosed a duplicate copy of this sheet.			
I am the <input type="checkbox"/> applicant/inventor.			
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).			
<input checked="" type="checkbox"/> attorney or agent of record. Registration Number <u>35,902</u>			
<input type="checkbox"/> attorney or agent under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____			
 _____ Signature		<u>October 26, 2005</u> Date	
<u>Michael R. Hull</u> Typed or printed name		<u>(312) 977-9902</u> Telephone Number	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
<input type="checkbox"/> Total of _____ forms are submitted.			

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Dated: October 26, 2005

Signature:  (Michael R. Hull)

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: MS RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: October 26, 2005

Signature:

(Michael R. Hull)

Docket No.: 29985/05-112C
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Andrew H. Cragg et al.

Application No.: 10/069,107

Art Unit: 3736

Filed: December 16, 2002

Examiner: Brian Scott Szmai

For: Device and Method for Determining a Depth of
an Incision

AMENDMENT IN RESPONSE TO
FINAL OFFICE ACTION (37 C.F.R. §1.116)

MS RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

INTRODUCTORY COMMENTS

This paper is filed in response to the final office action mailed on June 20, 2005. A petition for a two-month extension of time, RCE application, and the requisite fees are enclosed herewith.

Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this paper.

Remarks/Arguments begin on page 8 of this paper.

AMENDMENTS TO THE CLAIMS

Please cancel claims 4 and 7 without prejudice or disclaimer; please amend claims 1, 5-9, 18, 25, 42 and 43 as follows:

1. (Currently Amended) A device for determining a depth of incision that extends from an epidermal layer to a blood vessel having a puncture, the device comprising:
an elongated member including a distal end and a proximal end and a lumen extending between the proximal and distal ends, the lumen accommodating at least one extending member that enters the blood vessel through the puncture, the distal end having means for locating the blood vessel while comprising a tapered surface for receiving a portion of the blood vessel surrounding the puncture for impeding the distal end of the elongated member from entering the blood vessel.

2. (Original) The device according to Claim 1, wherein the elongated member has a constant outer diameter.

3. (Original) The device according to Claim 1, wherein the elongated member has an outer diameter which progressively decreases to a smaller outer diameter at the distal end.

4. (Cancelled)

5. (Currently Amended) The device according to Claim [4] 1, wherein the lumen is centered within the elongated member.

6. (Currently Amended) The device according to Claim [4] 1, wherein the lumen is off-center along the longitudinal axis of the elongated member.

7. (Cancelled)

8. (Currently Amended) The device according to Claim ~~7~~ 1, wherein the tapered surface at the distal end of the lumen has a substantially conic shape.

9. (Currently Amended) The device according to Claim 7 1, wherein the tapered surface at the distal end of the lumen has a substantially concave spherical shape.

10. (Currently Amended) The device according to Claim 7 1, wherein the tapered surface at the distal end of the lumen has a substantially stepped configuration.

11. (Currently Amended) The device according to Claim [4] 1, wherein the outer diameter of the lumen at the distal end of the elongated member is about 50% to 99% of an outer diameter of the elongated member.

12. (Currently Amended) The device according to Claim [4] 1, wherein the lumen at the distal end has a diameter of about .050 to .160 inches.

13. (Previously Presented) The device according to Claim 1, wherein the elongated member comprises a material with a hardness of at least 50D.

14. (Previously Presented) The device according to Claim 1, wherein a portion of the elongated member comprises a friction reducing material.

15. (Previously Presented) The device according to Claim 1, wherein the elongated member comprises a friction reducing material.

16. (Original) The device according to Claim 1, further comprising a depth indicating member positioned on an exterior of the elongated member and movable in an axial direction with respect to the elongated member.

17. (Original) The device according to Claim 16, wherein the depth indicating member is an elastic ring.

18. (Currently Amended) The device according to Claim 1, wherein ~~an~~ the extending ~~control~~ member extends ~~from a tapered surface and~~ beyond the distal end of the elongated member.

19. (Original) The device according to Claim 18, wherein the extending control member includes a proximal end, a distal end, and a lumen which extends from the proximal end to the distal end.

20 (Original) The device according to Claim 19, wherein the extending control member is configured to occlude and control a puncture in the blood vessel.

21. (Original) The device according to Claim 19, wherein the distal end of the extending member has at least one vent hole for allowing a fluid to enter the lumen of the extending member.

22. (Original) The device according to Claim 19, wherein the lumen of the extending member tapers from a first diameter at the proximal end to a second smaller diameter at the distal end.

23. (Original) The device according to Claim 19, wherein the extending member extends from the tapered surface of the device by about .10 to 6 inches.

24. (Original) The device according to Claim 19, wherein the extending member is formed from a flexible material to prevent the extending member from catching on subcutaneous tissue as the extending member advances through the patient's skin and tissue at the puncture site.

25. (Currently Amended) A device for determining a depth of an incision that extends from an epidermal layer to a blood vessel puncture site, the device comprising:
an elongated member having a distal end, a proximal end, and a lumen extending between the proximal and distal ends, the lumen accommodating at least one control member that enters the blood vessel, and means at the distal end including a tapered surface for locating the blood vessel puncture site by capturing an edge of the blood vessel puncture and for impeding entry of the distal end of the elongated member into the vessel;
and

a the control member extending from the distal end of the elongated member and configured to be received in through the puncture site.

26. (Original) The device according to Claim 25, further comprising a vent provided in the control member for venting fluid from the control member to the proximal end of the elongated member to provide an indication of location of the control member in the blood vessel.

27. (Original) The device according to Claim 25, wherein control member is tapered.

28. (Original) The device according to Claim 25, wherein the control member has a tapered lumen.

29. (Allowed) A method for determining a depth of an incision that extends from an epidermal layer to a puncture in a blood vessel, the method comprising the steps of:
introducing an elongated member through the incision, the elongated member having a proximal end, and a distal end configured for locating a blood vessel while preventing the distal end of the elongated member from entering the blood vessel; and locating the puncture in the blood vessel by receiving a portion of a wall of the blood vessel with the distal end.

30. (Allowed) The method for determining a depth of an incision according to Claim 29, wherein the elongated member is introduced over a guidewire into a tissue tract.

31. (Allowed) The method for determining a depth of an incision according to Claim 30, wherein the guidewire has a preselected stiffness to raise a portion of the wall of the blood vessel adjacent to the puncture.

32. (Allowed) The method for determining a depth of an incision according to Claim 30, wherein the guidewire directs the wall of the blood vessel to be received by the elongated member.

33. (Allowed) The method for determining a depth of an incision according to Claim 20, wherein the elongated member is introduced until an elastic recoil is produced by the blood vessel.

34. (Allowed) The method for determining a depth of an incision according to Claim 29, wherein the elastic recoil is felt by the operator of the elongated member.

35. (Allowed) The method for determining a depth of an incision according to Claim 29, wherein the elongated member has an end configuration at the tip of the distal end which catches an anterior proximal lip of the puncture site.

36. (Allowed) The method for determining a depth of an incision according to Claim 29, wherein an outer diameter of the elongated member is larger than a diameter of the puncture of the blood vessel.

37. (Allowed) The method for determining a depth of an incision according to Claim 29, wherein a depth indicating member which is slidably movable in a longitudinal direction on the elongated member is set to mark a depth of the puncture in the blood vessel.

38. (Allowed) The method for determining a depth of an incision according to Claim 29, further comprising a step of inserting a portion of an extending member into the blood vessel.

39. (Allowed) The method for determining a depth of an incision according to Claim 38, wherein the extending member at least partially occludes the puncture in the blood vessel wall.

40. (Allowed) The method for determining a depth of an incision according to Claim 38, wherein a fluid from the blood vessel enters the extending member.

41. (Allowed) The method for determining a depth of an incision according to Claim 40, wherein the fluid from the blood vessel entering the extending member provides visual feedback to the operator.

42. (Currently Amended) The method for determining a depth of an incision that extends from an epidermal layer to a puncture in a blood vessel, the method comprising the steps of:

introducing an elongated member through the incision, the elongated member comprising a distal end, proximal end and a lumen extending therebetween, the lumen accommodating at least one inner member that enters the puncture in the blood vessel;

providing visual feedback of a general location of the blood vessel puncture by venting blood through the elongated member; and

providing specific tactile feedback of a specific location of the blood vessel puncture by ~~contact between the elongated member and an exterior of~~ receiving an edge of the blood vessel surrounding the puncture in a tapered surface of the distal end of the elongated member which impedes entry of the elongated member through the puncture.

43. (Currently Amended) The method of Claim 42, wherein the visual feedback is provided by a the control member at a distal end of the elongated member, the control member having a vent hole.

REMARKS

This paper is filed in response to the final office action mailed on June 20, 2005. The Power of Attorney and Revocation of Prior Power of Attorney is forthcoming. The undersigned hereby verifies that he is authorized by the assignee of the present application to file this paper.

Claims 29-41 have been allowed. The remaining claims stand rejected; in response, claims 4 and 7 have been canceled and claims 1, 5-6, 8-12, 18-25, 42 and 43 have been amended; claims 1-3, 5-6 and 8-43 remain pending.

Applicants respectfully submit that this amendment is in full compliance with Rule 116 because it reduces the total number of pending claims and places all claims in a condition for allowance for the reasons set forth in the final office action on page 11, paragraph number 13. Specifically, each claim requires a distal end of the elongated member to include a tapered surface that receives a portion of the wall of the blood vessel that surrounds a puncture in the wall of the blood vessel which impedes entry of the elongated member into the blood vessel. No combination of the prior art teaches or suggests these features and therefore all pending claims are in a condition for allowance.

Turning to the rejections based upon the prior art, claims 1-5, 11 and 16-18 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 6,162,192 ("Cragg '192").

However, under MPEP § 2131,

"[t]o anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

Citing, Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Cragg '192 does not teach or suggest every element of amended claim 1 and therefore the anticipation rejection is improper. Specifically, Cragg '192 does not teach or suggest an elongated member with a distal end having a tapered surface that receives an edge of a blood vessel. The distal end 20 of Cragg in Fig. 1 and the remaining figures clearly shows a blunt, flat annular distal end with no tapered surface for catching an edge of a blood vessel. Thus, Cragg '192 cannot serve as an anticipating reference for amended claim 1 and therefore the anticipation rejection of claims 1-5, 11 and 16-18 is respectfully traversed.

Next, claim 6 is rejected under 35 U.S.C. § 103 as being unpatentable over Cragg '192. However, claim 6 merely recites that the lumen is off-center. Cragg '192 does not teach or suggest a distal end of an elongated member that includes a tapered surface for receiving an edge or portion of a blood vessel. Thus, Cragg '192 does not teach or suggest every element of independent claim 1 or dependent claim 6, and, under MPEP § 2142,

[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

Citing, *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); *see also* MPEP § 2143-§ 2143.03 for decisions pertinent to each of these criteria.

Cragg '192 cannot serve as a base reference for an obviousness rejection of dependent claim 6 because it fails to teach or suggest every element of independent claim 1. Cragg '192 clearly does not teach or suggest a distal end of an elongated member that catches an edge or portion of a blood vessel surrounding a puncture of a blood vessel which impedes entry of the distal end of the elongated member from entering the blood vessel as recited in amended claim 1. Cragg '192 clearly does not even remotely suggest this feature. There is nothing to impede the distal end 20 of the Cragg '192 elongated member from entering the vessel other than the size of the vessel puncture. Accordingly, the obviousness rejection of claim 6 based upon Cragg '192 is traversed.

Next, the claims 7-10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Cragg '192 in view of U.S. Patent No. 6,315,753 ("Cragg '753"). However, the combination of Cragg '192 and Cragg '753 still does not establish a *prima facie* case of obviousness. Specifically, Cragg '753 also fails to teach or suggest the distal end of an elongated member having a tapered surface for receiving a lip or edge of a blood vessel puncture. The Patent Office relies upon Fig. 26 of Cragg '753. However, element 164 is not an outer elongated member with a lumen as recited in amended claim 1 but instead is an inner member which describes Fig. 26 and member 164 as a pusher that is disposed within the

introduce 12 of Fig. 27. The element 164 of Fig. 26 pushes the sponge 140 in place and never engages an edge or lip surrounding a puncture of a blood vessel. Thus, Fig. 26 illustrates a pusher used with the introducer 12 of Fig. 1 but only as an inner member and therefore does not teach or suggest an elongated member that has a lumen extending therethrough and which has a distal end with a tapered surface for receiving an edge surrounding a puncture of a blood vessel. The only tapered distal end disclosed in either Cragg '192 or Cragg '753 is a distal end of a pusher rod 164 which is used to move the sponge towards the puncture. This is nothing to do with the outer elongated member and therefore no combination of these two references teaches or suggests every element of amended claim 1 and no *prima facie* case of obviousness has been established. Further, there is no suggestion or motivation to modify either Cragg '192 or Cragg '753 in a manner that would be required to meet the limitations of amended claim 1 because neither of these references address impeding the distal end of the outer elongated member from entering the blood vessel. Neither of these references address this problem nor provide a solution to it in the form of a tapered surface that receives a lip defining the puncture site.

Accordingly, applicants respectfully submit that the obviousness rejection of claims 7-10 has been traversed.

Next, the office action rejects claim 12, 19, 20, 23 and 24 under 35 U.S.C. § 103 as being unpatentable over Cragg '192 in view of U.S. Patent No. 5,437,631 ("Janzen"). In response, applicants present the following remarks.

The deficiencies of Cragg '192 are discussed above. Janzen in no way teaches or suggests a distal end of an outer elongated member with a tapered surface for receiving a lip of a blood vessel. None of the distal ends of the Janzen outer member are tapered and none of the figures in Janzen teach or suggest the receiving of part of the blood vessel in any tapered surface of a Janzen structure. Accordingly, no combination of Cragg '192 and Janzen teaches or suggests every element of amended claim 1 and therefore the obviousness rejection of claims 12, 19, 20, 23 and 24 are respectfully traversed.

Next, the office action rejects claims 13-15 under 35 U.S.C. § 103 as being unpatentable over Cragg '192 in view of U.S. Patent No. 5,395,353 ("Scribner"). The deficiencies of Cragg '192 are discussed above. Scribner is only cited for the proposition that it teaches materials of certain hardnesses. Thus, Scribner does not teach or suggest an elongated member with a tapered distal end for receiving an edge of a vessel puncture and

neither does Cragg. Therefore, no hypothetical combination of these two references presents a *prima facie* case of obviousness with respect to claim 1 and therefore the obviousness rejection of dependent claims 13-15 is traversed.

Next, the office action rejects claim 21 under 35 U.S.C. § 103 as being unpatentable over Cragg '192, Janzen '631 and further in view of U.S. Patent No. 6,063,085 ("Tay"). However, Tay is merely cited for the proposition that it discloses a vent hole. No structure in Tay remotely resembles the distal end of the elongated member as recited in amended claim 1. Neither does Janzen nor Cragg '192 as set forth above. Accordingly, no hypothetical combination of Cragg '192, Janzen and Tay teaches or suggests every element of amended claim 1 and therefore the obviousness rejection of dependent claim 21 has been traversed.

Next, the office action rejects claims 22 under 35 U.S.C. § 103 as being unpatentable over Cragg '192, Janzen and further in view of U.S. Patent No. 5,645,566 ("Brenneman"). The deficiencies of Cragg '192 and Janzen are discussed above. The Patent Office relies upon Fig. 1B of Cragg '192 for the proposition that it discloses a tapered outer surface for the elongated member. However, this tapered outer surface is not designed to receive an edge of the blood vessel and therefore Brenneman cannot supplement the deficiencies of Cragg '192 and Janzen as set forth above. Accordingly, no hypothetical combination of Cragg '192, Janzen and Brenneman teaches or suggests every element of amended claim 1 and therefore the obviousness rejection of dependent claim 22 based upon these three references is respectfully traversed.

Next, the office action rejects claims 25, 27 and 28 under 35 U.S.C. § 103 as being unpatentable over Janzen in view of U.S. Patent No. 5,601,602 ("Fowler"). However, Fowler fails to teach or suggest any element of the distal end of the elongated member that it is intended to receive an edge of a punctured vessel. The Patent Office relies upon Figs. 7 and 8 of Fowler however, these figures clearly show the elongated member extending into the blood vessel. No portion of the outer elongated member is intended to receive the lip of the blood vessel to prevent the elongated member from entering the blood vessel. Further, no outer portion of the member 56 of Fowler has a tapered surface for receiving an edge of the blood vessel. The outwardly flared wings 64 of Fowler are only extended after entry into the vessel. Nothing in Fowler is designed to keep the outer structure 56 from entering the vessel 70. As noted above, no structure of Janzen accomplishes this result either. Therefore, no

combination of Janzen and Fowler teaches or suggests every element of amended independent claim 25 and therefore the obviousness rejections of claims 25, 27 and 28 are respectfully traversed.

Next, the office action rejects claim 26 under 35 U.S.C. § 103 as being unpatentable over Janzen, Fowler and further in view of Tay. This rejection is traversed as Tay also fails to teach or suggest the outer elongated member having a tapered distal end for receiving an edge of the blood vessel. No combination of Janzen, Fowler and Tay teaches or suggests the tapered distal end recited in amended claim 25 that impedes entry of the distal end of the elongated member into the vessel and therefore no combination of these three references renders dependent claim 26 obvious.

Finally, claims 42 and 43 are rejected under 35 U.S.C. § 103 as being unpatentable over Tay in view of Janzen. In response, independent claim 42 has been amended to require the tapered distal end feature recited in independent claims 1 and 25 and, for the reasons set forth above, no hypothetical combination of these two references teaches or suggests every element of independent claim 42 and therefore the obviousness rejection of claims 42 and 43 is respectfully traversed.

An early action indicating the allowability of claims 1-3, 5-6 and 8-43 is earnestly solicited.

If the examiner has any further questions regarding this application, he is invited to telephone the undersigned at the number listed below.

Dated: October 26, 2005

Respectfully submitted,

By

Michael R. Hull

Registration No.: 35,902

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Attorney for Applicants

Mailing Date: October 26, 2005

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,107	12/16/2002	Andrew H Cragg	032005-130	3240

7590 11/03/2005
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EXAMINER

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MMH

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notice of Non-Compliant
Amendment (37 CFR 1.121)**

Application No.

10/069/07

Applicant(s)

Examiner

SZma1

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 10/31/05 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
 - ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____
- ☐ 2. Abstract:
 - ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____
- ☐ 3. Amendments to the drawings:
 - ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - ☐ C. Other _____
- ☒ 4. Amendments to the claims:
 - ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims).
 - ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: allowed is not a identifier

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/officeflyer.pdf>.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given no new time period if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the entire corrected amendment must be resubmitted within the time period set forth in the final Office action.
2. Applicant is given one month, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the corrected section of the non-compliant amendment in compliance with 37 CFR 1.121, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a Quayle action.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a Quayle action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a Quayle action; or

Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Denise Liles
Legal Instruments Examiner (LIE)

571-272-4364
Telephone No.

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